THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.23712 OF 2005

AND

WRIT PETITION NO.26848 OF 2005

DATED: 28-02-2006

Between:

M/s. Balaji Manikanta Nivas Apartments,

rep. by its Managing-cum-Working Partners.

1. Gadamsetty Tirupathaiah
2. Mopuru Yellareddy … Petitioner

And

1. The Superintending Engineer, Operation,
   APSPDCL, Vidhyut Bhavan, A.K. Nagar,
   Nellore, Nellore District; and others. … Respondents

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COMMON ORDER :

Since these two writ petitions are based on the same set of facts and arose out of the same cause of action and the parties to both the writ petitions are also being common, they are heard together and decided by this common order.

The petitioner in W.P.No.23712 of 2005 is a registered firm carrying on business of construction of apartments under the name and style of Balaji Manikanta Nivas. It is claimed that having obtained the approval of the local authority-Buchireddy Palem Gram Panchayat, the petitioner firm constructed Balaji Manikanta Nivas Apartments at Buchireddypalem Village as per the Builder Agreement entered into with the intending purchasers. However, the purchasers though failed to pay the full consideration, having illegally formed an association, occupied the flats in question without the consent and knowledge of the petitioner firm and that they were also taking steps for the installation of transformer and separate meters for supply of electricity to Balaji Manikanta Nivas Apartments. In the circumstances, the petitioner firm requested the respondents 1 to 4 – officials of the A.P.S.P.D.C.L. not to install the transformer / separate meters until the possession is delivered to them after obtaining the certificate from the local authority. A legal notice dated 18-10-2005 was also got issued to the said effect. It is alleged that in spite of the same, the officials have been taking steps for installation of transformer / separate meters for supply of electricity to Balaji Manikanta Nivas Apartments. Hence, W.P.No.23712 of 2005 seeking a declaration that the action of the respondents 1 to 4 officials in installing the transformer / separate meters for supply of electricity to Balaji Manikanta Nivas Apartments at Ward No.7, Block-11, Buchireddypalem village, Nellore district is arbitrary and illegal.

While the said writ petition is pending, Balaji Manikanta Nivas Residents Welfare Association (for short, 'Residents Welfare Association') filed W.P.No.26848 of 2005 pleading that the said association was formed and registered under the Societies Registration Act, 2001 with 31 persons who have purchased vacant site to

an extent of 1,750 sq. yards in Sy.No.218/3 and 214/1 of 6th Ward, 11th Plot of Buchireddypalem village. It is stated that the said 31 persons purchased 32.4 sq. yards of undivided share each under different Registered Sale Deeds and each of them entered into a separate Registered Builder Agreement with M/s. Balaji Manikanta Nivas Apartments (6th respondent herein) for construction of apartments at the rate of Rs.3,96,000/- per flat which includes the cost of construction as well as the remuneration to the builder. Many of the members had paid the entire amounts as agreed to the 6th respondent. As per the Builder Agreement the construction of the flats was required to be completed within 9 months from the date of the agreement. As per the approved plan sanctioned by the 5th respondent Gram Panchayat, the 6th respondent – M/s. Balaji Manikanta Nivas Apartments (hereinafter referred to as 'the builder') was supposed to construct Ground + 4 floors earmarking the ground floor for parking. However, the 6th respondent Builder without taking the consent of the petitioner association altered the approved plan and got the permission from the Regional Deputy Director of Town & Country Planning, Nellore, thereby converting half of the portion in the ground floor earmarked for parking for construction of additional flats. The petitioner association contended that the action of the 6th respondent Builder in changing the approved plan is contrary to Section 6 of the A.P. Apartments (Promotion of Construction and Ownership) Act, 1987 (for short, 'the Act') and the Rules made thereunder. It is also alleged that the 6th respondent Builder failed to provide any amenities in spite of the fact that he collected the entire agreed amount from the members of the petitioner association. Apart from violating the approved plan without notice to the petitioner association, the 6th respondent Builder has also failed to complete the construction. It is stated that since the building in question has been provided with a temporary electricity service connection HSC-7981, some of the members of the petitioner association having occupied the flats, made an application to the respondents 1 to 4 officials to install the transformer and meters on receiving the necessary charges. However, at the instance of the 6th respondent Builder, their request was not considered and on the other hand the temporary service connection was also disconnected on 1-12-2005. Hence, W.P.No.26848 of 2005 seeking a declaration that the action of the respondents 1 to 4 officials in not providing electricity supply by installing transformer and individual meters to the apartments in question is arbitrary and illegal.

The Buchireddypalem Gram Panchayat, the 5th respondent in W.P.No.26848 of 2005, filed a counter-affidavit stating that permission was accorded to the Builder for construction of ground + 3 floors in consultation with the Regional Deputy Director, Town & Country Planning, Nellore vide proceedings dated 19-1-2005. However, the Builder had deviated with the approved plans. That apart, since the certificate of completion and the certificate of fitness for occupation as required under the provisions of the Act were not produced , the Gram Panchayat addressed a letter to the respondents 1 to 4 officials not to issue electricity supply to the premises in question.

I have heard the learned Counsel for both the parties; and perused the material on record.

Under Section 4 (4) of the Act, an apartment can be transferred by the promoters to any person only after obtaining the required certificate of completion and the certificate of fitness for occupation from the local authority concerned. Under Sub-section (5) of Section 4 of the Act, though the Water Works Department and the Electricity Board may supply water and electricity on temporary basis for the purpose of the construction of the building, the same is liable to be disconnected if the promoters proceed with the construction contrary to the sanctioned plan on an intimation from the local authority. That apart, Section 26 of the Act makes it clear that every owner of an apartment shall be entitled to have electricity, water and drainage connection on permanent basis only on payment of such fees as may be prescribed and on production of a certificate from the competent authority to the effect that the apartment has been constructed in accordance with the sanctioned plan.

In the case on hand, the specific allegation made by the Residents Welfare Association i.e., the petitioner in W.P.No.26848 of 2005 is that the Builder has violated the sanctioned plan and proceeded with the construction in the ground floor contrary to the approved plan and without notice to the members of the petitioner

association who are all owners of the site in question. The builder disputes the same and alleges that the purchasers themselves committed default in payment of the agreed amounts. Such disputed questions of fact cannot be enquired into and decided by this Court on the strength of mere affidavits of the parties containing conflicting versions. However, as reflected from the counter-affidavit of the Gram Panchayat, the fact remains that the certificate of completion and the certificate of fitness for occupation have not been granted by the local authority so far. In the circumstances, as a matter of fact the apartment cannot be transferred to any person for occupation under Section 4 (4) of the Act.

In the light of the mandatory provisions of the Act which prohibit electricity service connection on permanent basis in the absence of production of a certificate from the competent authority to the effect that the apartment has been constructed in accordance with the sanctioned plan, no Mandamus can be issued compelling the respondents 1 to 4 officials to install the transformer and separate meters as prayed in W.P.No.26848 of 2005.

So far as W.P.No.23712 of 2005 is concerned, there shall be a direction to the respondents 1 to 4 officials to strictly adhere to the provisions of the Act while considering the request of the Residents Welfare Association or the individual residents for installation of transformer / separate meters or for supply of electricity to the building in question on permanent basis. In other words, unless the certificates as required under Section 4 (4) of the Act as well as certificate from the competent authority to the effect that the apartment has been constructed in accordance with the sanctioned plan are produced, no electricity supply on permanent basis shall be provided.

However, keeping in view that some of the owners have already occupied their respective flats, it is made clear that the temporary power supply to the building in question under HSC-7981 shall not be disconnected subject to the condition that the total consumption charges shall be borne by the occupants themselves.

It is made clear that this Court has not expressed any opinion with regard to the allegations and counter-allegations made by the parties against each other particularly as to the violation of the approved plan and the payment of the consideration to the builder and it is open to the parties to work out the appropriate remedy as available under law for redressal of their grievance, if any.

Both the Writ Petitions are disposed of with the above directions. No costs.

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G. ROHINI, J.

Dt. 28 –02-2006.

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